

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.NOs.33372 and 33373 of 2004
and
W.P.M.P.Nos.40334 and 40336 of 2004,
1404 and 1410 of 2007

The Management of MBD
Motor Transport,
41, Kamarajar Street,
Kancheepuram District

... Petitioner in
both the petitions

Vs.

1.The Presiding Officer,
Principal Labour Court,
Chennai-600 104.

... Respondent No.1 in
both the petitions

2.J.Syed Jaleel

... Respondent No.2 in
W.P.No.33372 of 2004

M.Ravi

... Respondent No.2 in
W.P.No.33373 of 2004

These writ petitions have been preferred under Article 226 of the Constitution of India praying for the issue of the writ of certiorari, calling for the records relating to the award of the first respondent in I.D.Nos.347 and 346 of 2000 respectively, dated 5.5.2004 and to quash the same.

For Petitioner : Mr.R.Parthiban

For Respondents: Mr.K.Elango for R2

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COMMON ORDER

This order shall govern these two writ petitions.

2.These petitions have been brought forth, seeking writ of certiorari to quash the common award passed by the first respondent, namely the Principal Labour Court, Chennai made in I.D.Nos.347 and 346 of 2000, whereby the Labour Court has passed an award directing the Management, the writ petitioner herein to reinstate the

petitioners therein into service along with other remedies.

3.The court heard the learned counsel on either side. The affidavits filed in support of the petitions are perused.

4.The second respondent in W.P.No.33373 of 2004 laid I.D.No.346 of 2000, stating that he joined service in the writ petitioner Management as Driver in 1986; that he was getting a sum of Rs.3000/- per month as pay in the year 1999; that he joined the Sangam, which is affiliated to CITU in 1994, over which the Management was unhappy; that when the petitioner therein reported duty on 4.5.1999, he was refused employment; that many a demand made by him was in futile; that the petitioner approached the labour authority and made an application, but the conciliation proceedings ended in failure and under these circumstances, the act of termination of service of the petitioner was illegal and it has got to be set right and hence, the industrial dispute arose.

5.The second respondent in W.P.No.33372 of 2004 laid I.D.No.347 of 2000, stating that he was working as Conductor under the Management from 1983; that he was getting a sum of Rs.2700/- per month as salary; that the petitioner was refused employment from 1.5.1999; that he became the member of the Sangam in the year 1994, over which the Management was unhappy; that the conduct of the respondent would amount to termination of service; that the petitioner preferred a petition before the Labour Officer and the conciliation proceedings ended in failure and hence, there arose an occasion to raise an industrial dispute.

6.Both claims were denied by the Management, stating that the petitioners have voluntarily abandoned the service and deserted the duty and there was no termination of service at all and under these circumstances, no question of granting any relief would arise.

7.Both the industrial disputes were taken up for joint enquiry and as a result, the first respondent, Labour Court, has passed an award in favour of the claimants, which is the subject matter of challenge in these writ petitions.

8.Advancing his arguments on behalf of the Management, the writ petitioner, the learned counsel would submit that in the instant case, the award passed by the first respondent Labour Court has got to be quashed for the reasons that the industrial disputes before the Labour Court themselves were not maintainable; that the labour court should have rejected the same; that a reading of the award would indicate that there was retrenchment and hence, provisions under Section 25-F of the Industrial Disputes Act would be attracted; that in order to attract the provisions, a duty is cast upon the claimants to show that they are in continuous service for a period of 240 days before the date when they were refused employment, by adducing cogent evidence that they were continuously working for 240 days; that in the absence of any proof to that effect, no question of application of Section 25-F of the Act would arise; that in the instant case, even as per the averments made in

the claims, it would be quite clear that they reported to duty intermittently for 5 days thrice and all put together, they worked for 15 days per month and thus, it would be quite evident that they have not served continuously for 240 days and hence, no question of applying the provisions under Section 25-F of the Act would arise.

9. Added further the learned counsel that in the instant case, there was no termination of service, but there was abandonment of duty by both the claimants; that the labour court has proceeded in a wrong premise as if there was termination of service; that the labour court has believed the evidence of the claimants, but it has disbelieved the evidence adduced by the Management for no reasons and under these circumstances, the award passed by the labour court suffers both in factual and in law and hence, it has got to be set aside. In support of his contentions, the learned counsel for the petitioner has also relied on two decisions of the Supreme Court reported in AIR 1981 SC 1253 (MOHAN LAL VS. THE MANAGEMENT OF M/S. BHARAT ELECTRONICS LTD.) and 2006 (1) SCC 106 (R.M. YELLATTI VS. ASSTT. EXECUTIVE ENGINEER).

10. Contrary to the above, the learned counsel for the second respondent in both the petitions would submit that the contentions now put forth by the petitioner's side are untenable; that it is an admitted fact that the second respondent in both the writ petitions were the Conductor and Driver respectively and they have been working under the Management for more than two decades. The case of these respondents before the labour court was that when they went to work on a particular date, the Management refused to give them work and under these circumstances, they have issued a notice; that a reply was also given that criminal cases were pending against them and during which period, they could not be given employment and thus, the denial of employment was quite clear from the reply issued; that in the instant case, the contention put forth by the petitioner's side that they have not worked for 240 days continuously and hence, the provisions under Section 25-F of the Act could not be attracted, cannot be countenanced for the reason that it is not the case of the second respondents that they have worked for 8 hours per day, but they have worked continuously for 5 days and further, their wage was actually paid monthwise and not dailywise and it has been clearly admitted in the petition and the said fact has not been denied and under these circumstances, petitioner's contentions have got to be rejected and a reading of the reply given by the Management would clearly indicate that the second respondents herein were refused employment and hence, it was a termination of service and therefore, the contention that there was no termination of service, has got to be discountenanced and that the labour court was perfectly correct in granting the award and hence, it has got to be sustained.

11. After careful consideration of the submissions made, the court is of the considered opinion that both the writ petitions require an order of dismissal. It is not in controversy that the second respondent in both the writ petitions were working as Conductor and Driver respectively in the writ petitioner Management

for nearly more than 2 decades. The case of the second respondent in both the petitions before the Labour court was that during the course of their service, when they went for work, they were refused employment. According to the second respondent in both the cases, it was termination of service. On the contrary, the definite stand taken by the Management before the Labour Court was that there was no termination at all.

12.As could be seen from the communication addressed by the Management to the second respondent in both the petitions, it would be quite clear that so far as W.P.No.33373 of 2004 is concerned, the second respondent was the Driver and two criminal cases are pending against him and till the cases are over, no question of giving employment would arise and there was no objection for being employed after the criminal cases are over in his favour. A reading of the letter would clearly speak of the tenor of the Management that it has refused to give employment during the relevant time. The contention put forth by the counsel for the petitioner that there was no termination of service cannot be accepted, in view of the available materials.

13.The further contention put forth by the learned counsel for the petitioner that they have not served for 240 days continuously preceding the period and hence, the provisions of Section 25-F of the Act would not be attracted, cannot be countenanced, since in the instant case, the specific averment is that they have been paid monthly wages. Once it is an admitted fact that they are paid wages monthwise, no question of daily wages would arise. Further, in the instant case, materials what are placed before the court, would clearly speak to the fact of termination and if to be so, their claim petition before the labour court were maintainable. Hence, the labour court has taken a view that there was termination of service and even without notice or enquiry, termination of service has taken place and it is violative of principles of natural justice. Hence, the court is of the considered opinion that no ground or reason is noticed by the court to quash the award of the labour court. Hence, both the writ petitions fail and the same are dismissed. No costs. Consequently, the connected WPMPs are also dismissed.

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Asst.Registrar

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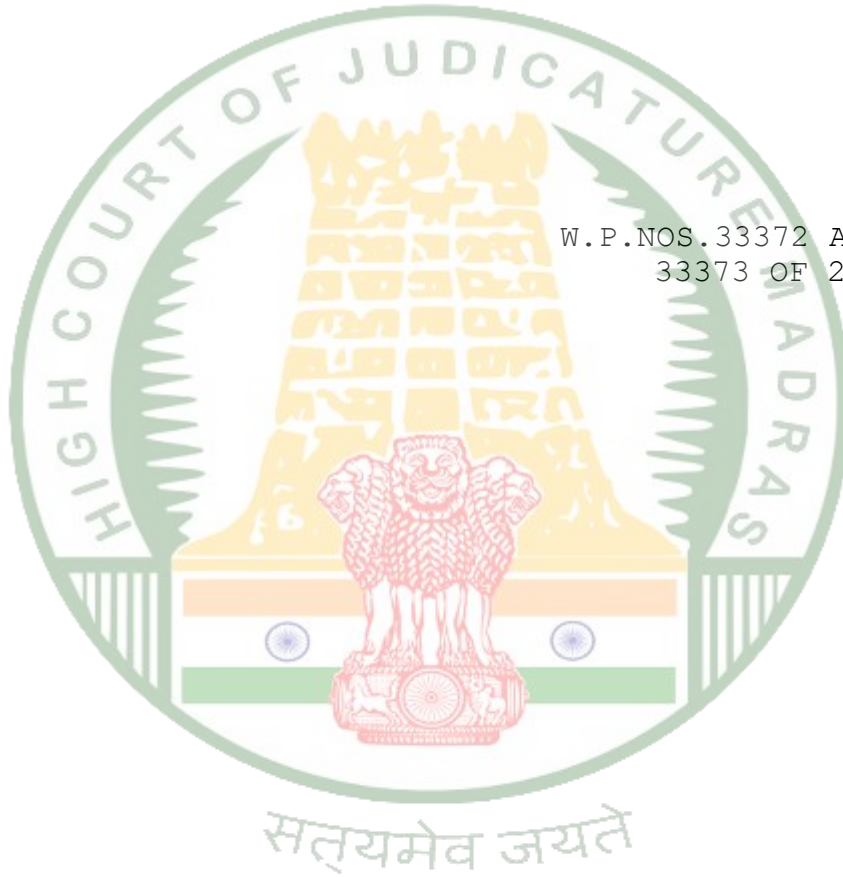
Sub Asst.Registrar

To

The Presiding Officer,
Principal Labour Court,
Chennai-600 104.

+2ccs to Mr.R.Parthiban, Advocate Sr 63959,63960
+1cc to M/s.K.Elango, Advocate Sr 63581

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W.P.NOS.33372 AND
33373 OF 2004

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